International Seabed Authority ISBA/21/C/6

Council

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Procedures for the election in 2016 of the members of the Legal and Technical Commission in accordance with article 163 of the United Nations Convention on the Law of the Sea

Note by the secretariat

I. Introduction

1. The next full election of the members of the Legal and Technical Commission will be held in 2016 during the twenty-second session of the International Seabed Authority. The purpose of the present note is to remind the Council of the Authority of the agreed procedures for the election and to provide other information relating to the criteria and qualifications of candidates and related matters.

II. Legal and Technical Commission

2. The Commission is established by article 163, paragraph 1, of the United Nations Convention on the Law of the Sea as a subsidiary organ of the Council. Members of the Commission are elected under the Council from among the candidates nominated by the members of the Authority.[1] They are required to have appropriate qualifications, such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise.[2] They are also required to have no financial interest in any activity relating to exploration and exploitation in the Area.[3] The Council is required to endeavour to ensure that the membership of the Commission reflects all

[1] Art. 163, para. 2, of the Convention and rule 77 of the rules of procedure of the Council.
[2] Art. 165, para. 1, of the Convention.
[3] Art. 163, para. 8, of the Convention and rules 11 to 13 of the rules of procedure of the Commission. To this end, before assuming their duties, members are required to make a written declaration witnessed by the Secretary-General or his or her authorized representative.

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appropriate qualifications.[4] Members of the Commission are appointed for a term of five years and are eligible for re-election for a further term.[5]

III. Guidelines for the conduct of elections

3. One difficulty experienced in past elections was that nominations were often submitted very late, making it difficult for members of the Council to fully evaluate them. In contrast, the process for the election of judges of the International Tribunal for the Law of the Sea obviates such difficulty thanks to the clear timeline laid out in the statute of the Tribunal. Article 4, paragraph 2, of the statute provides that, at least three months before the date of the election, the Registrar of the Tribunal is required to address a written invitation to the States parties to the Convention to submit their nominations for members of the Tribunal within two months. The Registrar is then required to prepare a list in alphabetical order of all the persons thus nominated, with an indication of which States parties have nominated them, and to submit that list to the States parties no later than the seventh day of the last month before the date of each election.

4. For the second election of the Commission, in 2001, the Council decided that, for future elections to the Commission, in order to allow members of the Council adequate time to review the candidacies, the nominations and the curricula vitae of candidates should be submitted to the Secretary-General of the Authority not later than two months prior to the opening of the session at which the election was to take place (see ISBA/7/C/7, para. 6). A similar process was followed for the election in 2006. Unfortunately, in 2006, the Council's request notwithstanding, many nominations were received less than two months before the election, which was held on 14 August. It was noted that, in the absence of a firm decision by the Council on a closing date for submissions and on the consequences of failing to submit a nomination in time, the Secretary-General had no discretion to reject the late nominations.

5. At the thirteenth session of the Authority, in 2007, the Council decided (see decision ISBA/13/C/6) that the procedure for the nomination of candidates for future elections of the Commission would be as follows:

(a) At least six months before the opening of the session at which the election is to be held, the Secretary-General shall address a written invitation to all members of the Authority to submit their nominations of candidates for election to the Commission;

(b) Nominations for election to the Commission shall be accompanied by a statement of qualification or curriculum vitae setting out the candidate's qualifications and expertise in fields relevant to the work of the Commission and shall be received not less than three months prior to the opening of the relevant session of the Authority; nominations received less than three months prior to the opening of the relevant session of the Authority will not be accepted.

[4] Art. 165, para. 1, of the Convention.
[5] Art. 163, para. 6, of the Convention.

6. That procedure was more or less followed in the subsequent election (see para. 9 below), in 2011, and it is recommended that the Council strictly adhere to the agreed procedures for the election in 2016.

IV. Size and composition of the Commission

7. Under article 163, paragraph 2, of the Convention, the Commission is to be composed of 15 members. Nevertheless, if necessary, the Council may decide to increase the size of the Commission, having due regard to economy and efficiency. The Council has made use of that provision by increasing the size of the Commission in all four previous elections of the Commission.

8. The first election was held in August 1996. The Council took advantage of the flexibility provided in article 163, paragraph 2, of the Convention and decided, after protracted and difficult negotiations over the balance of regional representation on the Commission, to increase the number of seats on the Commission from 15 to 22, without prejudice to future elections. The same procedure was repeated for the elections in 2001 and 2006. The Council decided to approve all the candidacies submitted, increasing the number of seats on the Commission from 15 to 24 in 2001 and to 25 in 2006. On each occasion, the decision was said to be taken without prejudice to future elections and claims of the regional groups and interest groups. Although the Council did not record its reasons for deciding to increase the size of the Commission on each occasion, it was apparent that the decision was motivated less by the actual or perceived workload of the Commission than by the desire to avoid a vote and to accommodate late nominations.

9. In 2011, in electing the members of the Commission for the current period (2012-2016), the Council recalled its decision relating to the procedures for election and expressed regret that some nominations had been received after the closing date. Nevertheless, the Council noted that, owing to the flexibility shown by members of the Council and regional groups, the total number of candidates for election did not exceed 25, as had been agreed by the Council in its previous decisions. The Council therefore decided, without prejudice to future elections, and having due regard to economy and efficiency, to increase the number of members of the Commission to 25. In fact, owing to the resignation in 2014 of Aleksander Čičerov (Slovenia), with no subsequent nomination of a replacement candidate, the existing membership of the Commission stands at 24.

10. Article 165, paragraph 1, of the Convention entrusts the Council with the obligation to ensure that the membership of the Commission reflects all appropriate qualifications such as those relevant to exploration for and exploitation and processing of mineral resources, oceanology, protection of the marine environment, or economic or legal matters relating to ocean mining and related fields of expertise. There are no specific requirements in the Convention in relation to regional representation on the Commission. Instead, the Convention simply provides that due account shall be taken of the need for equitable geographical distribution and the representation of special interests.[6]

11. In past elections, the Council has taken steps to ensure that the membership of the Commission reflects an appropriate balance of such qualifications and expertise.

[6] Art. 163, para. 4, of the Convention.

For example, at the second election, in 2001, the Council requested the secretariat to provide it with an indication of the likely programme of work for the Commission, so that members of the Council might make informed judgements of the type of qualifications needed for members of the Commission. At the twelfth session of the Authority, in 2006, the outgoing members of the Commission were asked to share with the Council their experience on the expertise required by the Commission for its effective functioning. In response, the Commission stated that there was a need to preserve as wide a range of disciplinary expertise as possible. It specifically noted the need for specialists in certain key disciplines, including marine biology, mining engineering and mining economics. The Commission further acknowledged that it was unlikely to be able to provide every type of expertise needed to fulfil its wide remit of work. For that reason, the Commission recalled that, when necessary, expertise had been sought outside the membership by the secretariat to bring additional specialist knowledge and skills to its work. The practice was viewed as an essential process, which should continue.

12. The areas of expertise of the current members of the Commission may be summarized as follows:

Area of expertise	*Number of members of the Commission*
Mineral resources	10
Oceanology	5
Marine environment	2
Economy	1
Legal matters	6

13. Article 163, paragraph 8, of the Convention stipulates that members of the Commissions shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Commissions upon which they serve, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with annex III, article 14, or any other confidential information coming to their knowledge by reason of their duties for the Authority.

14. At the nineteenth session of the Authority, in 2013, members of the Commission drew attention to the provisions of article 163, paragraph 8, of the Convention and rule 11 of the rules of procedure of the Commission relating to financial interest in activities relating to exploration and exploitation in the Area. The Commission requested the secretariat to provide it at its following session with clarification and guidance as to the scope and interpretation of those provisions. At its twentieth session, the Commission considered the guidance provided by the secretariat in a conference room paper and agreed that the provisions of rule 11, together with the written undertaking signed by each member upon joining the Commission, were satisfactory. The Commission emphasized that it was primarily incumbent on each member of the Commission to ensure that he or she complied with the obligations set out in the Convention in the interest of transparency and accountability and the evolving workload of the Commission (ISBA/20/C/20, para. 36).

15. Following a discussion of that issue in the Council at the same session, and on the basis of the report of the Chair of the Commission, the Council requested the Commission to prepare draft procedures on the handling of confidential data and information, as provided for in rule 12 of the rules of procedure of the Commission, to be submitted to the Council for consideration and approval no later than at its session in 2016.

V. Participation in the work of the Commission

16. No conclusive records of attendance of members of the Commission were kept before the seventh session of the Authority. Nevertheless, after the adoption by the Council of the rules of procedure of the Commission in 2001, the secretariat began to maintain a definitive record of attendance. It shows that, during the period from 2002 to 2006, attendance at meetings of the Commission averaged 76 per cent. Attendance during the period from 2007 to 2011 averaged 71.8 per cent, and since 2012 has averaged 79.6 per cent. While those statistics are encouraging, it may be noted that they conceal the fact that some elected members have not attended any meetings, and that some have attended only one or two meetings. It may also be noted that, since 2013, owing to its increased workload, the Commission has been meeting twice a year. It has been a challenge for some members of the Commission to attend both meetings in a year.

VI. Matters for consideration by the Council

17. In the light of the preceding discussion and in preparation for the election in 2016, the Council may wish to recall its decision concerning the procedure for nomination of candidates (ISBA/13/C/6). The qualifications of candidates, in particular the securing of the appropriate combination of relevant expertise, are a factor that will determine the effective discharge by the Commission of its functions. This will be particularly true during the tenure of the next members of the Commission, as the Authority intensifies its efforts to formulate a regulatory regime for the exploitation of seabed minerals in the Area. Equally important is the issue of independence of the members of the Commission and the avoidance of any actual or perceived conflict of interest. The Council may wish to consider giving advance guidance to members of the Authority on those matters. Finally, the Council may wish to reiterate the importance of the continued participation of members in all sessions of the Commission.